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ABSTRACT

Business partnership with public schools, while holding great promise for educational improvement, is hindered by legal questions about equity. Disagreement on how to apply this value to education has produced much litigation over school finance. Some allege that property tax financing violates the equal protection clause of the Fourteenth Amendment; in classifying citizens by wealth, it discriminates against poor school districts. Similarly, corporate aid may unjustly favor some districts. In equal protection cases, courts have required that states' schemes for classifying citizens rationally follow legitimate legislative purposes. Some legal scholars believe courts have in many such rulings exceeded their authority. Activist courts, reasoning that the Constitution requires statewide spending equalization, may attack corporate aid to schools. Abstract concepts of equal rights, however, must be weighed against greater overall opportunities created by corporate aid. In recent cases, courts have disagreed whether property tax financing uses a discriminatory classification and whether education is subject to equal protection. Regardless of business involvement, however, schools will always rely mostly on public funding. Courts should therefore apply equal protection cautiously. Public-private partnerships, if created in a spirit of fairness, pose no substantial constitutional questions. A 64-item reference list is included. (MCG)

AN EQUITABLE FRAMEWORK FOR CORPORATE PARTICIPATION IN THE PUBLIC SCHOOLS

by

Richard Allen Caldwell, Director
Public Affairs Program
University of Denver

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SUMMARY

The central argument of this paper is that the most significant legal barrier to the deepening involvement of corporations with the public schools is, ultimately, the problem of finding constitutional mechanisms for the fair and equitable distribution of corporate resources in aid of education. It will be argued that corporate contributions are to be welcomed, from a policy perspective, if they can be made within an equal protection framework that does not enhance the position of some students, or some school districts, at the expense of others.

Redefinition of the relationship between private industry and public schools is critical to America's need for a technologically literate and economically productive workforce. Simply stated, the educational system cannot remain isolated from the needs, priorities and intentions of the corporate sector.

There is a distinct lack of clear national policy with respect to the educational foundation required for those who will work in the high-technology or service-related industries of the future. Equally important is the question of the degree of legally permissible cooperation between corporations and the schools. The failure to explore the idea of partnerships between public schools and private industry more fully, or to create supportive legal mechanisms, may accentuate a growing "technological illiteracy," consign many of our deserving citizens to unemployment or underemployment, and result in substantial numbers of people who are only marginally qualified to function in a competitive economic environment.

Governance in America is based on the notion that we are a "nation of laws and not of men." Nevertheless, our legal system contains a great deal of flexibility, which is the result of a unique constitutional structure. Subject to state and federal constitutional restrictions, interpretations, and changing definitions of substantive justice, the state legislative body possesses complete power over the schools. For example, if it chose to do so, the state legislature could change local school boundaries, prescribe curriculum, set school accreditation standards, enhance school safety requirements, alter teacher certification requirements, and set teacher tenure requirements. This control by the state legislature is subject, however, to review by the state and federal courts for violation of constitutional rights.

State laws concerning schools generally provide broad guidelines; thus, control of public education means little in the abstract. The structural details come from either state

education departments or from local district implementation. The local school districts, through powers delegated from the state legislature, carry the major responsibility for day-to-day operations.

Corporate aid to the public schools, in whatever form, must fit into a pre-existing legal framework. Legal questions surrounding private-public partnerships in education have as their basis a recognition of the gradual recasting of fundamental distinctions between the private and public sectors.

The ideas of equity, fairness and equality are central values in the American ideological system. Yet, there is considerable and sharp disagreement about what these values mean in an education context because the objectives of education have long been a source of intense policy conflict. This is so because education can serve as an equalizing or a leveling social force, or it can function as an unfair selection mechanism that acts to perpetuate existing patterns of inequality and lack of opportunity.

American courts have been closely involved in deciding major issues of education policy and in overriding the total autonomy of local and state authorities. In the main, courts have concerned themselves with two problems: (1) eliminating segregation in the schools and (2) equalizing education opportunities. Thus, the rejection of the "separate but equal doctrine," in Brown v. Board of Education of Topeka, was followed by intense litigation about disparities in school finance schemes. Since the majority of elementary and secondary school revenues are often generated by local property taxes, and since the amount and value of taxable property varies tremendously from one school district to another, the unequal distribution of resources works to the considerable disadvantage, it is alleged, of residents of poorer school districts.

The many school finance cases are important because corporate contributions to schools, no matter how they are structured, may very well be likened to a kind of finance, i.e., funding of a new type that could be subject to judicial review by the courts. The central issue in the present discussion is the need to find a way to balance the possible right to an equally-financed education against what could be defined as an evolving state interest in promoting an education policy that may result in better training, economic growth, and higher employment prospects for graduates. Simply stated, there is clearly a state interest in encouraging quality education, keyed to future employment prospects, even at the expense of abstract notions of perfect equality. Indeed, additional education opportunities, made possible by enlightened, even self-interested, corporate initiatives that are

nondiscriminatory in intent, may result in greater overall equity. Better schools are in the public interest.

If better education is the result of new kinds of partnerships between businesses and schools, then a strict, judicially-based, test of "contributional equality" may not be required by even very broad interpretations of the Fourteenth Amendment's equal protection clause. It is the position of this paper, however, that reclaiming excellence in education, through breaking down some barriers between public and private, will require a heightened commitment to equity on the part of corporations, in order to avoid, at some point in the future, a substantial measure of judicial scrutiny and intervention.

1. CORPORATIONS, SCHOOLS AND THE COURTS

To state the obvious, that the first duty of schools is education, turns out not to be self-evident. First, there is a strong tendency to equate education with teaching, transmitting skills and knowledge, which it is not; at least that is not the school's only major task. Second, there is a lack of understanding of how important character formation, education's core subject, is in itself for the purposes for which teaching is usually sought -- as a source of basic skills for work, for mutuality, for membership in a civil community, and for effective teaching.

- Amitai Etzioni
An Immodest Agenda (1983)

The value of education transcends its economic dimension, of course. Knowledge does not need to be justified in instrumental terms. But in our present period of fiscal belt tightening, it is well to remind ourselves of the connection between education and our collective well-being. A decline in our citizens' capacity to analyze, innovate, create, and communicate will condemn us all to a meager existence as it impoverishes our cultural and civic life together. . . .

. . . in the emerging era of productivity, social justice is not incompatible with economic growth, but essential to it. A social organization premised on equity, security, and participation will generate greater productivity than one premised on greed and fear.

- Robert B. Reich
The Next American Frontier
(1983)

This is a time of searching criticism of the values, goals and outcomes of American education. How competent are the schools? What do we want them to accomplish? Americans have a basic faith in education and a constant hope that improvement in the public schools is linked clearly and directly to more profound improvement in the larger society. A central assumption has always been that a democratic society requires an educated citizenry so that individuals may participate in the full range of public life. A second assumption has been more utilitarian -- that public education systems are the foundation for continuing economic growth and development.

The most basic interests and values of society are represented in education policy. Yet, in a pluralistic society such as the

United States, there is often deep disagreement over which values should dominate. Since policy decisions that affect schools reach so deeply into the workings of the American community, conflict has always been an integral part of policy making. Many divergent interest groups contend regularly for leadership in determining the agenda for education policy. The interests of parents, professional educators and businesses are always present in education, for example, but are often at substantial variance with one another. Each contending group has a stake in the ultimate question: What should be the goals of education? Possible answers include the following:

- Preservation of the existing culture and status quo
- Production of literate and informed citizens
- Production of consumers
- Production of trainable workers
- Production of scientists and technologists
- Production and shaping of elites
- Religious indoctrination

Whatever goals are actually chosen, it is worth noting that education policy in the United States has usually been a function of two basic principles: first, education should be free, open and universal; second, control over education should be centered at the local level. The irony of these guiding principles is that education successes, failures and controversies have always spoken to the national purposes of promoting a deeper commitment to social equity along with greater excellence.

Schools reflect an interesting point of convergence between private enterprise and public values. Americans want to believe that their society is a meritocratic one in which the most intelligent and talented people rise to the top. Since public schools are free and available to everyone, individuals should be able to go as high as their ability and drive will take them. In this view, education acts as the great equalizer, providing opportunities for everyone to reach his or her full potential.

It is arguable that this belief is too simplistic. It is equally true that the present school system may reinforce and perpetuate certain forms of inequality in society. Schools play a considerable part in choosing who will come to occupy the higher status positions in society (Jencks, 1979). Conversely, school performance also sorts out those who will occupy the lower rungs in the occupational prestige ladder. Education is, therefore, a selection process, one that reflects both social class and an individual's ability and performance. It is not the bare fact

that schools differentiate, however, that is most troublesome; it is the rules of the selection process -- both written and unwritten -- that determine whether the results of the process are acceptable in a democratic society.

Business, the prime consumer of the education system's products, is increasingly interested in the structure, function and results of education Given the country's need for a technologically literate and economically productive workforce, it seems evident that the education system cannot remain isolated from the demands and priorities of the corporate sector. This new interest in education comes at a time when many traditional ideas of the proper role of business in society and in relation to government are breaking down. The rather narrow set of expectations that business will restrict itself to making a fair return on investment while producing quality goods and services at competitive prices, paying fair wages and obeying laws in a highly regulated administrative environment, is giving way to a broadened conception of private sector activism in the public domain. Nowhere is this new activism more apparent than in the public schools. Interestingly, alterations in traditional divisions between public and private spheres of endeavor coincide with the strong judicial and legislative movement toward socioeconomic egalitarianism as the prime goal of social policy.

The thesis of this paper is that the most significant legal barrier to the deepening involvement of corporations with the public schools is, ultimately, the problem of finding constitutional mechanisms for the fair and equitable distribution of corporate resources in aid of education. Given the widening perception of the failures and inadequacies of the public school system, businesses, in their role as employers, will become much more involved in setting the education tone for America. More significantly, the private sector will be providing some of the actual resources for achieving a new set of education goals -- goals that are closely related to fostering the societal conditions that promote economic growth and enhance the ability of the United States to compete in a challenging international environment. It will be argued that such contributions to the schools are to be welcomed, if they can be made within an equal protection framework that does not enhance the position of some students, or some school districts, at the expense of others.

Corporate involvement with the public schools has already taken many forms. For example:

- In Los Angeles, an "Adopt-a-School" program, sponsored by Atlantic Richfield Company, has encouraged corporations to invest in neighborhood schools by donating manpower, personnel who volunteer their time as teachers, tutors and coaches.

- In Boston, the Boston Compact, recently ratified by the Boston School Committee, has created a partnership between leading

city businesses and inner city schools. Many of the city's employers have promised good jobs for all Boston high school graduates, providing that they meet minimum standards for reading, writing and regular attendance. This year, under the agreement, some 200 businesses will reserve 400 jobs for Boston graduates; two years from now, they will provide 1,000 jobs.

- Corporations have provided free equipment to the schools to be used for a variety of instructional purposes. Microcomputers and related software appear to be the most popular items. In Denver, Atari has donated several dozen computers to one high school that has provided a high level of mathematics and computer programming training for more than 15 years. In return, a number of students have developed users' guides and software development for Atari. Tandy Corporation is offering schools all over the nation a free staff development package to help teachers learn to use computers for instruction. Apple Computer Corporation, anxious to donate a computer to every school in the country, has been lobbying Congress and various state legislatures for an appropriate tax break.

- The "school foundation" movement has been spreading across the country, with more and more communities setting up tax-exempt organizations through which to solicit private and corporate donations for the public schools. In Pittsburgh and Dallas, school districts have set up education foundations which rely on contributions from corporations and wealthy individuals. In Beverly Hills, California, residents have been able to raise $400,000 for each of the past five years through dinners, sales of a school guide and calendar and movie premieres. The money has been used to save teacher positions in the wake of Proposition 13, to hold down the average class size, and to create programs in writing skills, remedial reading and special education.

- Standard Oil Company has granted nearly $2 million to the American Association for the Advancement of Science to begin "Science Resources for Schools," a project to help provide information and materials to improve the quality of classroom science.

- In 1978 the North Carolina General Assembly established the North Carolina School of Science and Mathematics, a residential high school in the Research Triangle area that currently enrolls 400 eleventh and twelfth grade students. The annual budget for this school is comprised of contributions from the state general fund (two-thirds) and from high technology companies in the area (one-third). The instructional staff is made up of teachers with advanced degrees in their fields (46% have doctorates), who need not be certified.

- In July the California legislature, in the midst of a severe financial crisis, approved $800 million for new school

revenues, financed by state tax increases. In return, the education establishment was obliged to accept an array of reforms proposed by Bill Honig, the new superintendent of public instruction. These reforms include stiffer high school requirements, a modified form of merit pay called the "mentor" teacher program, severely restricted teacher tenure coupled with easier ways to fire incompetent teachers, and added instructional time. For the first time since the passage of Proposition 13 in 1978, California's public schools will receive more money in real dollars than in the previous year. Many credit this bill's passage to an alliance of leading businesses with teachers' unions, engineered by Honig.

These types of corporate activities, and many others which are being developed and actively promoted, raise a series of concerns about increasing reliance on private sector initiatives in the context of the public schools. Serious legal questions in this area have as their basis a recognition of the gradual recasting of the fundamental relationships in education between private organizations and the public schools.

2. SCHOOL FINANCE, EQUITY AND THE PRIVATIZATION OF THE PUBLIC SCHOOLS

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> - Amendment XIV
> The Constitution of
> the United States

Economist Charles E. Lindblom (1977) has suggested that the central question in any specified public policy issue is the degree to which the market replaces the government or the government replaces the market. He points out that all politico-economic systems employ three primary mechanisms of social control in order to reach certain ends -- exchange, which is the fundamental relationship on which market systems are built; authority, which is basic to the formal organization of government; and persuasion, which is a ubiquitous commodity that lends itself to instruction in the "free competition of ideas" that typifies and underpins liberal democracy.

When confronted with the changing relationship between public and private sectors in education, what is most striking is the recognition that not all public problems are acted on exclusively by government. In a mixed system, one marked by perpetual and dynamic change in the relationships between public and private, public problems often reverberate in the private sector. Conversely, many private problems are acted on in government and many of these same private problems are acted on in government as though they were public problems. It is useful to recognize that most problems are not ultimately solved exclusively, if at all, by government, even though many are dealt with and transformed there. Are some public ends more efficiently served by entrepreneurial involvement with public education? To what extent does such involvement, based on exchange, create specific legal dilemmas, which will necessitate the extension of governmental authority and control?

Declines in the perceived effectiveness and relative performance of the public education system are altering in fundamental ways the heretofore largely passive acceptance by corporations of the inadequate skills and limited future potential of recent graduates for learning and doing the complex tasks of a technological society. If corporations stand ready to act in the public interest and to do more for the schools, through direct involvement, financing and planning, then specific legal questions arise with respect to the guidelines and constraints, if

constitutionally required, that courts will place on business initiatives. This is especially critical if the benefits of these initiatives are unfairly apportioned among the recipients, or if they are purely for the furtherance of economic ends. In short, if a major priority of business is to shape school programs, which are now financed almost entirely by the taxpayer, how can an equitable framework for the channeling of private resources into the public sector be developed and maintained?

The notion that business has a responsibility to society beyond the production of goods and services is hardly a new one. Certainly, this responsibility has long been expressed in charitable contributions, public service functions and fund raising activities of all kinds. What is new is the idea that coordinated private and public action may be required to advance society's best interests, that some issues, like education, are simply too significant to be left drifting at the mercy of old political categories.

A useful beginning in defining the nature of a public-private partnership has been made by The Committee for Economic Development (1982). The Committee points out that a "public-private partnership means cooperation among individuals and organizations in the public and private sectors for mutual benefit." One key to avoiding judicial intervention in such partnerships may very well be the idea of mutuality. If a framework of genuine and reciprocal cooperation is established to form a policy consensus on community goals, agreement on institutional roles, and support for action, then the state's interest in promoting the welfare of the whole community can be upheld. Legal issues may turn less on the perfection of abstract notions of individual rights to equality, and more on broader concepts of community benefit.

If simultaneous action in the public and private sectors is going to be required for the achievement of an important social end, if private initiatives for the benefit of public education are to be regarded favorably by the courts, then overall fairness and an intent to confer advantages on a broad base of recipients must be the hallmarks of public-private partnerships. The process of legal review should not stand in the way of thoughtfully-constructed partnerships. Indeed, the legal system should be responsive to concerns about quality in education and should stand ready to facilitate those approaches that stand a chance of enhancing the functioning of the schools.

The Task Force on Education for Economic Growth, a broad coalition of governors, corporate executives and educators, called for the creation of public-private partnerships in a key recommendation.

> We strongly recommend that leaders outside the traditional educational system -- especially business leaders -- take specific steps to help improve the

schools. They along with labor leaders and members of the scientific, engineering and technical professions, must become more active in public education. They must help marshal the resources needed to pay for quality education. They must communicate the skills that are needed in the workplace -- and thus help educators define the standards that the schools should meet. They must share with school managers their expertise in planning, budgeting and management. And they should encourage their employees to take a more active role in helping improve the schools.

Specifically, we recommend that business leaders across the nation work actively to establish partnerships between businesses and schools: team teaching using teachers and specialists from industry, for example; customized job-training efforts between businesses and schools; the training of students and teachers in the use of equipment; courses actually taught in offices and factories; business-sponsored recognition for outstanding teachers and principals, and a host of other cooperative ventures.

- Task Force on Education for Economic Growth (1983)

Early in the twentieth century, Austrian legal philosopher Eugen Ehrlich advanced the proposition that the "center of gravity of legal development lies not in legislation, nor in judicial decision, but in society itself" (Ehrlich, 1912). At the heart of this statement is the recognition that law is dependent to a large extent on events, that it exists in a larger social framework, and that it is but one of a number of mechanisms for ordering discussion and management of significant policy questions. This basic emphasis on social reality was viewed by Roscoe Pound (1922) as requiring the development of legal institutions and rules that satisfied "social wants," which were linked rationally to the satisfaction of worthwhile purposes. What could be more worthwhile than the creation of legal rules that facilitated the revitalization of American public education?

The ideas of equity, fairness and equality are central values and aspirations of the American ideological system. Equality, like justice, is basic to the organization of American society. Indeed, the Fourteenth Amendment to the United States Constitution declares that no state shall deny a person equal protection of the law. Yet, like justice, equality is not a term that is easily or conveniently defined. Equality is valued for its own sake, as an attribute of being human. It is also valued as an instrument to obtain other things of value. This lack of consensus has always been manifest in an education context. This is so because education can serve as an equalizing or leveling social force, or

it can function as a selection mechanism that acts to perpetuate existing patterns of inequality and social stratification.

American courts have been deeply involved in deciding major issues of education policy. In the main, they have concerned themselves both with eliminating segregation and with equalizing educational opportunities. Thus, the rejection of the "separate but equal doctrine," in Brown v. Board of Education of Topeka, 349 U.S. 294 (1955), has been followed in recent years by intense litigation about disparities in school finance. School finance reformers in many states have argued that state programs for funding elementary and secondary schools were unconstitutional because they violated the equal protection clause of the Fourteenth Amendment. Since the majority of elementary and secondary school revenues are generated by local property taxes, and since the amount and value of taxable property varies tremendously from one school district to another, the unequal distribution of resources works to the considerable disadvantage of residents of poorer school districts.

The legal battles over school finance equalization reflect the conviction that expenditures are closely related to the quality of education. While this rather common-sense idea may be true, exact relationships are unclear. It does seem fair to say, however, that the level and type of expenditures do affect, either positively or negatively, the possibilities for overall education success. Quite obviously, wealthy districts can pay teachers higher salaries, construct and maintain higher-quality physical facilities and offer a wider range of educational programs. Districts whose activities are supplemented by corporate or foundation largess, may have possibly unfair advantages over those that are not so fortunate.

In a general sense, government action often entails the classification of citizens, taxing various income groups at different rates to effectuate particular social purposes, providing health care and housing to some and not to others, and admitting some persons to state universities and rejecting others, on the basis of merit or other demographic factors. In essence, equal protection cases generally require a court to decide whether specific classifications can be justified by their rational relationship to some specific and legitimate legislative purpose or state interest (Cox, 1978).

Courts have found "suspect" legislative classifications resting on characteristics such as race and religion and have required states to demonstrate a "compelling" reason for using such classifications. Courts have also held that the equal protection clause protects certain "fundamental rights" more rigorously than other interests. When cases involve "fundamental interests," courts pass judgment on both the classifications and the purposes of legislation (Berger, 1977).

At a minimum, the equal protection clause would appear to (1) apply to all persons; (2) prohibit discriminatory state actions; (3) prohibit state involvement in discriminatory private actions; (4) not be limited to formal legal rules, but to apply as well to both the intent and results of a law; 5) allow many types of classifications and differentiations, but force the state to treat all persons within the same class equally; (6) not tolerate "equal discrimination"; and (7) force consideration of whether a classification, in itself, is unreasonably underinclusive or overinclusive, i.e., whether a differentiation is a reasonable response to a problem, given the totality of the circumstances (Baum, 1981; Birkby, 1983).

Given these minimums, how far does the Fourteenth Amendment extend into the domain of public policy? How far should it extend in setting education policy with respect to private-public partnerships? The views of several noted legal scholars are instructive:

> The constitutional requirement of "equal protection of the laws" cannot possibly mean that a State must treat everyone exactly alike. Classification is an inescapable part of government. The Fourteenth Amendment does not require a State to allow an almost blind man to drive an automobile because it grants licenses to those with perfect vision. . . .
>
> (1) A classification is constitutionally permissible which has some reasonable basis in terms of some rational view of the public interest.
>
> (2) If a set of facts could conceivably exist that would render a classification reasonable, their existence must be assumed (Cox, 1978).
>
> * * *
>
> Since Brown, the Court has continued to expand, and to confuse the public perception of, its power of equity. The result has been to substitute social-science speculation for precedent and principle as the standard of both constitutional meaning and equitable relief.
>
> . . . The most prominent feature of this new concept of equity is the object addressed. Equity has now become the means of "reconciling public and private needs." What at the Founding was thought to offer relief to individuals from "hard bargains" has become a judicial power to draw the line between governmental powers and individual rights and to attempt to create remedies for past encroachments against whole classes of people.

> . . . The formulation of public policy is an expression of political will. To be legitimate, such policies must reflect the will of the people, not the independent will of their deputies. The judiciary has no means available for ascertaining the public will in any meaningful sense. It is not, strictly speaking, a representative body. It must be assumed that the Court, when it moves to make decisions with respect to such matters as immediate integration of schools, busing, low-income housing development, and remedial-education programs, is exercising not merely judgment: it is making policy choices; it is exercising its own will. It is exercising a power that the Constitution denies to it. The Court, under the guise of its "historic equitable remedial powers," has been endeavoring to formulate public policies for which it lacks not only the institutional capacity, but more important, the constitutional legitimacy (McDowell, 1982).
>
> * * *
>
> The framers, it needs to be said at once, had no thought of creating unfamiliar rights of unknown, far-reaching extent by use of the words "equal protection" and "due process." Instead, they meant to secure familiar "fundamental rights," and only those, and to guard them as of yore against deprivation except by (1) a nondiscriminatory law, and (2) the established judicial power and procedure of the State (Berger, 1977).

These rather "conservative" views of the limits on the legitimate extension of judicial power under the flag of equal protection, lead to the following question: Are corporate contributions to he public schools vulnerable to attack on the theory that the Constitution requires equal spending per student by local school districts throughout a state? Will privately raised funds and in-kind aid make our public schools quasi-private? This would be an unwarranted conclusion to draw from existing school finance cases. Nevertheless, several cautionary notes are in order, as the range of private action in the schools accelerates.

Both state and federal school finance cases are important because corporate contributions to the schools may very well be likened to a unique kind of "finance," i.e., funding of a new type that could be the subject of judicial review by active courts. If such finance were truly inequitable, such review might well be justified. The central issue in the present discussion would seem to be the need to balance the possible right to an equally funded education against what could be defined as an evolving state interest in promoting an education policy that results in demonstrable education benefit to a large number of students, creates community solidarity, and enhances the likelihood of

economic growth, higher productivity in the labor force and reduced costs in the public sector.

Simply stated, there is clearly a state interest in encouraging quality education that relies, in part, on contributions from the private sector, even at the expense of abstract and utopian notions of perfect equality of treatment. Indeed, high-quality education opportunities, made possible by enlightened, even self-interested, corporate contributions that are nondiscriminatory in effect and beneficial in operation, may result in greater overall equity. If a better education for substantial numbers of students is the result of new kinds of partnerships between business and schools, then a strict judicially-based test of "contributional equality" may not be required. Without question, however, reclaiming excellence in education will require a continuing, long-term commitment to essential equity on the part of corporations, in order to avoid the application of broadened concepts of equal protection.

In order to make these positions clearer, it is worthwhile to consider the current status of school finance litigation. Proponents of school finance equalization have consistently argued that many programs for funding education violate the equal protection clause of the Fourteenth Amendment, because reliance on local property taxation constituted a classification of students according to a suspect characteristic, the wealth of their communities, and this could not be justified by any compelling state purpose. It has also been forcefully argued that students have a fundamental right to an education and that this right should not be any less available in one community than in another. But is some degree of unequal financing a violation of equal protection?

In theory, while not a guarantee of equal education quality, if schools spent approximately the same amount of money per pupil, this might satisfy some interpretations of the due process clause. This has not been accomplished nationwide, because wealthier states, or states with a greater commitment to education, are able to pay much more per pupil than are poorer states. According to the U.S. Bureau of the Census (1980), each student in New York is supported by a state subsidy of $2,759, while a student in Tennessee receives only $1,172. Since the federal government provides less than 10% of the money for the public schools, equalization across state lines is impossible.

Given the difficulty of creating a national school finance scheme and the tradition of local and state control of schools, litigation has centered at the state level. Since public schools have largely been financed through property taxes, rich school districts can spend more money than poor ones on each student, and at a lower taxing rate. State equalization aid, typically, only partially makes up for these disparities. This situation has tended to advantage suburban students over those in the inner

city. Businesses located in some districts tend to advantage those districts over agricultural areas; districts with natural resources are able to provide more per pupil than those without.

The movement toward equalization of school finance on the state level was accelerated by Serrano v. Priest, 487 P.2d 1241 (1971). In this case, the California Supreme Court ruled that education was a fundamental right, under the California constitution, and that it could not be compromised by the wealth of a child's parents or neighbors. The Court said that the state's school finance scheme violated both the United States and California constitutions. The system's substantial dependence on local property taxation caused wide disparities in local school revenues and meant that the quality of a child's education was a product of his geographical locale.

The rationale behind Serrano has not proven persuasive on the federal level, however, or in other states. In 1973 the U.S. Supreme Court, in San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), ruled that education was not necessarily a fundamental right and that there was no need to show that the state education finance system was the result of some "compelling state interest," only that it was rational. The Court further stated that the only fundamental rights for the purpose of the equal protection clause are those "implicitly or explicitly guaranteed by the Constitution."

With respect to the issue of wealth as a suspect classification, the Court in Rodriguez said that differences in spending levels could not be equated with "interference with fundamental rights," and upheld the use of property taxes in Texas by stating that there was no evidence that Texas children in certain districts were deprived of "an adequate minimum educational offering." The Court stated:

> . . . a sufficient answer to appellees' argument is that, at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.

Recently, in Lujan v. Colorado State Board of Education, 649 P.2d 1005 (1982), the Colorado Supreme Court, in an elaborately reasoned decision, held that the state's system of financing public elementary and secondary education is constitutional, and reversed a district court's ruling to the contrary. Under the Public School Finance Act, the state's schools are financed through a combination of local, state and federal revenues. The Act establishes a financing formula whereby those districts with higher assessed property valuations are able to generate more revenue for educational purposes than those districts with lower assessed property valuations. In addition, the statutory method for funding capital construction projects -- the capital reserve fund and the bond redemption fund -- operate so that high property

wealth districts can raise more revenue than low property wealth districts. In its ruling, the court rejected the equal protection argument and the notion that wealth is a suspect classification in school finance:

> . . . Appellees argue that a "suspect class" is present here either as a "class" composed of low-wealth school districts, or as a "class" composed of low-income people. We disagree. The evidence in this case does not demonstrate that the school finance system operates to the peculiar disadvantage of any identifiable, recognized class.
>
> . . . there is no distinct and insular "class" of poor persons as required for equal protection analysis. Under this analysis, we define a "class" as being a group marked by common attributes or characteristics. Here, however, the alleged class of "poor persons," while possibly linked by their respective income levels, have no common attribute relative to Colorado's school finance system. The evidence does not show that poor persons in Colorado are concentrated in low-property wealth districts, or that they uniformly or consistently receive a lower quality education, or that districts in which they reside uniformly or consistently expend less money on education.

Finally, the court held that under the Colorado Constitution, the mandate that the general assembly provide a "thorough and uniform system of free Public schools," did not mean that the education expenditures per pupil in every school district had to be identical, so long as expenditures within a given school district were relatively uniform.

Equalization in school finance is a long way off, if it is attainable (or desirable) at all. Litigation over the issues involving equal protection continues and jurisdictions are often in profound disagreement. Not even the most vocal critics of various forms of private aid to the public schools have argued, however, that business involvement will eventually supplant public funding. Without question, the majority of actual school revenues will continue to be supplied by the taxpayer.

Specifically, based on a review of school finance litigation, on the inconclusive federal and state status of this litigation, and on an understanding of the problems inherent in the limitless extension of the Fourteenth Amendment, a restrained perspective on the applicability of the equal protection clause to public-private partnerships in education is in order. Indeed, in both state and federal courts where school finance schemes are reviewed under applicable constitutional provisions, where no fundamental right to education or suspect class is found, minimal judicial scrutiny is applied and the school finance structure is held

constitutional. In essence, many courts have held that the difference in quality between two schools cannot be determined by looking only at the differences in per pupil expenditures. This has been the approach in Idaho, Thompson v. Engleking, 537 P.2d 635 (1975); in Washington, Northshore v. Kinnear, 530 P.2d 178 (1974); and in Georgia, McDaniel v. Thomas, 285 S.E 2d 156 (1981). Nevertheless, these issues are always subject to relitigation, because education has such a fundamental role in society and because equitable social policy should not differentiate unfairly between one identifiable subgroup and another.

Partnerships which pertain to one district, or school, and not another, may indeed create some disparities; but these financial and operational variations, unless deliberately extreme or unfair in concept, probably do not pose substantial or extreme constitutional questions at this time. In addition, even if disparities are created by corporate actions and activities, even if one district benefits from a specific corporate program and not another, the tremendous range and diversity of private initiatives may tend to balance out in the end. It is important at this time, during the early developmental stages of many new and unique kinds of partnerships, not to build unwarranted rigidities into the legal system, or to look prematurely toward legal review of private initiatives in education. On the other hand, such initiatives involve state action, and it is critical that these actions be guided by a spirit of fairness and essential equity.

REFERENCES

Adler, Mortimer J. The Paideia Proposal. New York: Macmillan, 1982.

Alexander, Kern. School Law. St. Paul, Minn.: West, 1980.

Arons, Stephen. Compelling Belief: The Culture of American Schooling. New York: McGraw-Hill, 1983.

Auletta, Ken. The Underclass. New York: Random House, 1982.

Baum, Lawrence. The Supreme Court. Washington, D.C.: Congressional Quarterly Press, 1981.

Berger, Raoul. Government by Judiciary: The Transformation of the Fourteenth Amendment. Cambridge, Mass.: Harvard University Press, 1977.

Bickel, Alexander M. The Supreme Court and the Idea of Progress. New York: Harper & Row, 1970.

Birkby, Robert H. The Court and Public Policy. Washington, D.C.: Congressional Quarterly Press, 1983.

Black, Theodore M. Straight Talk About American Education. New York: Harcourt Brace Jovanovich, 1983.

Bluestone, Barry and Bennett Harrison. The Deindustrialization of America. New York: Basic Books, 1982.

Botkin, James. Global Stakes. Cambridge, Mass.: Ballinger, 1982.

Bowles, Samuel and Herbert Ginitis. Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life. New York: Basic Books, 1976.

Brown v. Board of Education of Topeka, 349 U.S. 294, 1955.

Collins, Randall. The Credential Society. New York: Academic Press, 1979.

Committee on Economic Development. Public-Private Partnership: An Opportunity for Urban Communities. New York: Committee for Economic Development, 1982.

Corrigan, Richard. "Industrial Policy," National Journal, vol. 15, no. 9, Feb. 26, 1983.

Cox, Archibald. The Role of the Supreme Court in American Government. New York: Oxford University Press, 1976.

Cremin, Lawrence. Public Education. New York: Basic Books, 1976.

de Lone, Richard H. Small Futures. New York: Harcourt Brace Jovanovich, 1979.

Ehrlich, Eugen. Fundamental Principals of the Sociology of Law. Cambridge, Mass.: Harvard University Press, 1912, 1936.

Ely, John Hart. Democracy and Distrust. Cambridge, Mass.: Harvard University Press, 1980.

Etzioni, Amitai. An Immodest Agenda. New York: McGraw-Hill, 1983.

Ginzberg, Eli. "The Mechanization of Work," Scientific American, vol. 247, no. 3, Sept. 1982.

Giuliano, Vincent E. "The Mechanization of Office Work," Scientific American, vol. 247, no. 3, Sept. 1982.

Glazer, Nathan. Affirmative Discrimination. New York: Basic Books, 1978.

Goodlad, John I. A Place Called School. New York: McGraw-Hill, 1983.

Grossman, Joel B. and Richard S. Wells. Constitutional Law and Judicial Policy Making, 2nd ed. New York: John Wiley, 1980.

Hamilton, Robert W. The Law of Corporations. St. Paul, Minn.: West, 1980.

Herman, Edward S. Corporate Control, Corporate Power. Cambridge, Mass.: Cambridge University Press, 1981.

Howard, A.E. Dick. "A Litigation Society?" The Wilson Quarterly, vol. 5, no. 3, Summer 1981.

Hyman, Herbert H. The Enduring Effects of Education. Chicago: University of Chicago Press, 1975.

Jencks, Christopher. Who Gets Ahead? New York: Basic Books, 1979.

LaMorte, Michael. School Law. Englewood Cliffs: Prentice-Hall, 1982.

Lerner, Barbara. "American Education: How Are We Doing?" The Public Interest, no. 69, Fall 1982.

Lindblom, Charles E. Politics and Markets. New York: Basic Books, 1977.

Lujan v. Colorado State Board of Education, 641 P.2d 1005, 1982.

McDaniel v. Thomas, 285 S.E.2d 156, 1981.

McDowell, Gary L. Equity and the Constitution. Chicago: University of Chicago Press, 1982.

McNett, Ian E. Let's Not Reinvent the Wheel: Profiles of School/Business Collaboration. Washington, D.C.: Institute for Educational Leadership, 1982.

National Commission on Excellence in Education. A Nation at Risk: The Imperative of Educational Reform. Washington, D.C.: U.S. Department of Education, 1983.

New York Stock Exchange Office of Economic Research. People and Productivity: A Challenge to Corporate America. New York: New York Stock Exchange, Inc., 1982.

Nonet, Philippe and Philip Selznick. Law and Society in Transition: Toward Responsive Law. New York: Harper & Row, 1976.

Northshore v. Kinnear, 530 P.2d 178, 1974.

Odden, Allan, C. Kent McGuire and Grace Belsches-Simmons. School Finance Reform in the States: 1983. Denver: Education Commission of the States, 1983.

Peirce, Neal R. and Deborah Sagen. "Business Increasingly Sees Quality Education as Vital to Its Interests," National Journal, Oct. 15, 1983.

Persell, Carolyn Hodges. Educational Inequality. New York: Free Press, 1977.

Polenberg, Richard. One Nation Divisible: Class, Race, and Ethnicity in the United States Since 1938, 2nd ed. New York: Penguin, 1980.

Pound, Roscoe. An Introduction to the Philosophy of Law. New Haven, Conn.: Yale University Press, 1922, 1959.

Rabkin, Jeremy. "The Judiciary in the Administrative State," The Public Interest, no. 71, Spring 1983.

Reich, Robert B. The Next American Frontier. New York: Times Books, 1983.

Robinson v. Cahill, 303 A.2d 273, 1973.

Royster, Vermont. "Reforming Education," The American Scholar, Spring 1983.

Samuelson, Robert J. "From Crisis to Crisis," National Journal, July 9, 1983.

San Antonio Independent School District v. Rodriguez, 411 U.S.1, 1973.

Schochet, Gordon J. "Social Responsibility, Profits, and the Public Interest," Society, vol. 16, no. 3, March/April 1979.

Serrano v. Priest, 487 P.2d 1241, 1971.

Stanfield, Rochelle. "Education Report: New or Old Federalism," National Journal, vol. 15, no. 19, May 7, 1983.

Stanfield, Rochelle L. "The Reports Are In, But Nobody Knows How To Pay the Costs of Better School," National Journal, Oct. 15, 1983.

Task Force on Education for Economic Growth. Action for Excellence. Denver: Education Commission of the States, 1983.

Task Force on Federal Elementary and Secondary School Policy. Report of the Task Force. New York: The Twentieth Century Fund, 1983.

Task Force on Federal Elementary and Secondary School Policy. "Can America's Schools Be Saved?" Newsweek, May 9, 1983.

Task Force on Federal Elementary and Secondary School Policy. Business-School Partnerships: A Plus for Kids. Arlington, Va.: National School Public Relations Association, 1980.

"The Bold Quest for Quality," Time, Oct. 10, 1983.

Thompson v. Engleking, 537 P.2d 635, 1975.